SUPREME COURT OF THE UNITED STATES.

No. 1[illegible]. 69.

ELIZA LEFTWICH ET AL., PLAINTIFFS IN ERROR,

vs.

NOEL L. LECANU.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Protest and note annexed to petition	3	1
Citation to Edward Durrive	6	2
Marshal's return on citation	8	3
Citation to Frederick Durrive	8	3
Marshal's return on citation	10	3
Citation to Eliza Leftwich	10	3
Marshal's return on citation	11	4
Supplemental petition	12	4
Order on same	14	4
Citation to Edward Durrive, junior	14	5
Marshal's return on citation	16	5
Citation to Frederick Durrive	16	5
Marshal's return on citation	18	6
Citation to Edward Durrive	18	6
Marshal's return on citation	19	6
Answer of defendants	20	6
Judgment by default against Eliza Leftwich	21	7
Motion and order to set aside the judgment by default	21	7
Order continuance	22	7
Submission and verdict	23	7
Plaintiff's bill of exceptions	24	8
Defendants' bill of exceptions	26	9
Judgment, from minutes	28	9
Order on motion to sign judgment	29	9
Final judgment, from judgment docket	29	10
Order for a writ of error	31	10
Bond for writ of error	31	10
Writ of error	34	11
Citation of appeal and marshal's return of service	35	11

1 United States circuit court, sixth judicial circuit, and eastern district of Louisiana.

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

Petition, filed February 3d, 1864.

To the honorable the judges of the sixth judicial circuit court of the United States, sitting in and for the eastern district of Louisiana:

The petition of Noel Leonor Lecanu, a subject of the French empire, now residing in the city of New Orleans, respectfully represents that Elisa Leftwich, who resides in the parish of Assumption, and Edw'd Durrive & Co., a firm of the city of New Orleans, composed of Edward Durrive and Frederic Durrive, the three aforesaid defendants, citizens of the State of Lou-
2 isiana, are justly and severally indebted to him in the sum of thirty-six hundred dollars, exclusive of interests, charges and costs, for the amount of a promissory note of $3,600, of which he is the holder and owner, made and subscribed on the 10th of April, 1863, by said Elisa Leftwich, bearing interest at 8 per cent. per annum, from maturity until paid—payable at the office of Edw. Durrive & Co., in New Orleans, to her own order, and by her endorsed, and endorsed also by said Edw'd Durrive & Co., and protested for non-payment at maturity, and notices duly given to the endorsers by Jos. Cuvillier, notary public of this city, as will more fully appear by said note and by said act of protest, which are annexed to and made a part of the present petition.

Wherefore, he prays that said Elisa Leftwich and said Edw'd Durrive & Co. be cited, and after due proceedings had, condemned in solido to pay to him thirty-six hundred dollars, with interests at eight per centum per
3 annum, from the 22d day of January, 1864, until paid, also seven 20-100 dollars for costs of protest, certificate of notices, and stamps, and all the costs of suit. He further prays for all the general and equitable relief which the case may require.

(Signed) J. MAGNE, *of Counsel.*

[Stamp 50 cents.]

Protest and note, filed with petition February 3d, 1864.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known that on this twenty-fifth day of January, in the year one thousand eight hundred and sixty-four, at the request of Mr. N. L. Lecanu of this city, holder of the original note, whereof a true copy is on the reverse hereof written, I, Joseph Cuvillier, a notary public in and for the city and parish of New Orleans, duly
4 commissioned and sworn, have presented said note to Mr. Edward Durrive, one of the members of the firm of Edward Durrive & Co., at their office, corner of St. Louis and Old Levee streets, in this city, where the same is made payable, and demanded of him payment thereof; he answered me that the said note could not be paid, the drawer thereof having left no funds at his office to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may to be suffered, for want of payment of the said note.

This done and protested, in the presence of Leon Fergus Janin and Alexander Adolph Lenes, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) JOSEPH CUVILLIER, *Not. Pub.*

Original signed, H. H. Lenes, L. F. Janin.

JOSEPH CUVILLIER, *Not. Pub.*

5 $3,600 doll's. NEW ORLEANS, *April* 10, 1863.

On the twenty-second day of January next, eighteen hundred and sixty-four, I promise to pay to my own order, at the office of Messrs. Edw'd Durrive & Co., in New Orleans, the sum of three thousand six hundred dollars, value received, with interest, at the rate of eight per cent per annum, from maturity until paid.

(Signed) ELIZA LEFTWICH.

Endorsed: ELIZA LEFTWICH.
EDW. DURRIVE & Co.

I, the undersigned, certify that I have this day given notice of the above protest to Eliza Leftwich, drawer and endorser of said note, and to Edw'd Durrive & Co., indorsers of the same, by two notices in print and writing, siged by me, dated this day, addressed to them respectively in the manner following, to wit: that of Eliza Leftwich, Star Post Office, parish of Assumption La., and which I have put this day into the post office in this city, prepaid; and that of Messrs. Edw'd Durrive & Co. I have handed also
6 this day, to Mr. Edw. Durrive, personally, at his office, corner of St. Louis and Old Levee streets, in this city.

In testimony whereof, I have granted this certificate in presence of the above-named Leon Fergus Janin and Alexander Adolphe Lenes, witnesses aforesaid, who have signed these presents together with me, notary, after reading the whole in my office, at New Orleans, on this twenty-fifth day of January, eighteen hundred and sixty-four.

[SEAL.] (Signed) JOSEPH CUVILLIER, *Not. Pub.*

[Stamp 5 cents.]

Citation to Edw'd Durrive.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

N. L. LECANU
vs.
ELISA LEFTWICH *et als.* } No. 3,427.

You are hereby commanded to summon Edward Durrive, individ-
7 ually, and as member of the firm of Edw'd Durrive & Co., a citizen of the State of Louisiana, to comply with the demand of Noel Leonor Lecanu, a subject of the French empire, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's

residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 3d day of February, A. D. one thousand eight hundred and sixty-four, and
8 of the independence of the United States of America the eighty-eighth year.

[L. S.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return on the above citation.

Rec'd 3d February, 1864, and on same day served copy of citation and petition personally on Edward Durrive, at his office, corner of Levee and St. Louis, in the city of New Orleans. Ret'd 4th Feb'y 1864.

(Signed) M. EGAN, *D'y U S. Marshal.*

Citation to Frederic Durrive.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

N. L. LECANU
vs.
ELISA LEFTWICH *et als.* } No. 3,427.

You are hereby commanded to summon Frederic Durrive individually, and as member of the firm of Edw'd Durrive & Co., a citizen of the State
9 of Louisiana, to comply with the demand of Noel Leonor Lecanu, a subject of the French empire, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 3d day of February, A. D. one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

10 *Marshal's return on the above citation.*

Rec'd 3d February, 1864, and on the 4th of Feb'y, 1864, served copy of the within citation and petition on Frederic Durrive personally, at his office, corner of Levee and St. Louis, city of New Orleans.

Ret'd 4th of February, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Citation to Elisa Leftwich.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

N. L. LECANU
vs.
ELISA LEFTWICH *et als.* } No. 3,427.

You are hereby commanded to summon Elisa Leftwich, a citizen of the

State of Louisiana, to comply with the demand of Noel Leonor Lecanu, a subject of the French empire, contained in the petition, of which a
11 copy accompanies this citation, or to deliver her answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against her by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 3d day of February, A. D. one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

Marshal's return on the above citation.

12 Received 3d February, 1864, and on the 4th day same month and year, served citation and copy of petition on Mrs. Eliza Leftwich, personally, at her residence, Bayou la Fourche, parish Assumption, between Napoleonville and Laberdeville.

(Signed) JOS. S. BADGER, *Dep'ty U. S. Marshal.*

Supplemental petition to make Edw. Durrive, jr., a party, filed February 4, 1864.

N. L. LECANU
vs.
ELISA LEFTWICH *et als.* } No. 3,427.

To the honorable the judges of the sixth judical circuit court of the United States, sitting in and for the eastern district of Louisiana:

The supplemental petition of Noel Leonor Lecanu, a subject of the empire of France, residing in the city of New Orleans, respectfully represents that since the filing of his original petition in this case, he has discovered that the firm of Edward Durrive & Co., of this city, is composed not only
13 of Edward Durrive and Frederic Durrive, as therein stated, but also of Edward Durrive, junior, who is, like the other two aforesaid members of the firm, a citizen of the State of Louisiana, and a resident of the city of New Orleans. And petitioner hereby confirms and reiterates all the facts and allegations contained in his original petition not inconsistent with the above modification.

Wherefore he prays that this supplemental petition be filed; that said Edward Durrive, j'or, be cited as well as his two copartners aforesaid, and after due proceedings had, that said Elisa Leftwich, said Edw'd Durrive & Co., Edward Durrive, Frederic Durrive, and Edward Durrive, j'or, be condemned in solido to pay him thirty-sixth hundred dollars, with interests at the rate of eight per centum per annum from the 22d of January, 1864, until paid, and all the costs of suit, and also seven 20-100 dollars for costs of protest, certificate of notices, and stamps. He further prays for all the
14 general and equitable relief which the case may require.

(Signed) J. MAGNE, *of Counsel.*

[Stamp 50 cents.]

Order.

Let this supplemental and amended petition be filed as prayed for.

New Orleans, February 4th, 1864.

(Signed) E. H. DURELL, *Judge.*

Citation to Edw'd Durrive, j'or.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

N. L. LECANU
vs. } No. 3,427.
ELISA LEFTWICH *et als.*

You are hereby commanded to summon Edward Durrive, jun'r, individually and as member of the firm of Edw'd Derrive & Co., a citizen of the State of Louisiana, to comply with the demand of Noel Leonor Lecanu, a sub-
15 ject of the empire of France, contained in the petition and supplemental and amended petition, of which copies accompany this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 4th day of February, A. D. one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

(Signed) F. B. VINOT, *D'y Clerk.*

16 *Marshal's return.*

Rec'd 5th Feb'y, 1864, and on the 12th of February, 1864, served a copy of citation and of pl'ff's petitions at the office of E. Durrive, jr., corner of St. Louis and Old Levee streets, by leaving them in the hands of his father, E. Derrive, s'or.

New Orleans, Feb'y 12, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Citation to Frederic Derrive.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

N. L. LECANU
vs. } No. 3,427.
ELISA LEFTWICH *et als.*

You are hereby commanded to summon Frederic Derrive, individually and as member of the firm of Edw'd Derrive & Co., a citizen of the State of Louisiana, to comply with the demand of Noel Leonor Lecanu, a
17 subject of the empire of France, contained in the supplemental and amended petition, of which a copy accompany this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 4th day of February, A. D. one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

(Signed) F. B. VINOT, *D'y Clerk.*

18 *Marshal's return.*

Rec'd 5th Feb'y, 1864, and on the same day served copy of the within citation and supplemental petition on Frederick Durrive personally at the city of N. O.

Ret'd Feb'y 5th, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Citation to Edw'd Durrive.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

You are hereby commanded to summon Edward Durrive, individually and as member of the firm of Edw'd Durrive & Co., a citizen of the State of Louisiana, to comply with the demand of Noel Leonor Lecanu, a subject of the empire of France, contained in the supplemental and amended peti-
19 tion of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1864.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 4th day of February, A. D. one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

20 Rec'd 5 Feb'y, 1864, and on the same day served copy of the within citation and supplemental petition on Edward Durrive personally, at the city of New Orleans.

Ret'd 5th Feb'y, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Answer, filed February 15th, 1864.

U. S. circuit court.

N. L. LECANU
vs.
ELIZA LEFTWICH *et al.* } No. 3,427.

Now into court, by their attorneys, come the defendants, and plead a general denial of all and singular the facts and allegations in plaintiff's petition contained.

Wherefore they pray for judgment in their favor, with costs and all further general and equitable relief with trial by jury.

(Signed) DURANT & HORNOR, *Deft's Attorneys.*

21 *Judgment by default against Eliza Leftwich, from minutes, November term,* 1863.

NEW ORLEANS, *Monday, March 7th,* 1864.

Present: Hon. Edw. H. Durell, district judge.
Absent: Hon. John Catron, presiding judge.

N. L. LECANU
vs.
ELISA LEFTWICH *et als.* } 3,427.

On motion of J. Magne, esq., of counsel for plaintiff, and on showing to the court that process of citation herein has been duly served on Eliza Leftwich, one of the defendants, and that she has failed to plead or answer within the legal delay, it is ordered that judgment by default be entered against the said Eliza Leftwich.

Motion and order to set aside the default against Eliza Leftwich, from minutes.

NEW ORLEANS, *Wednesday, March 16th,* 1864.

Present: Hon. Edw. H. Durell, district judge.
Absent: Hon. John Catron, presiding judge.

22 N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } 3,427.

On motion of J. Magne, esq., of counsel for plaintiff, and on suggesting that the default entered against Eliza Leftwich, one of the defendants, was entered under the impression that the answer was filed for the endorsees only, while it appears that the answer was made for all the defendants herein, it is ordered that the default entered herein against Eliza Leftwich be set aside.

Order continuance, from minutes of March 16th, 1864.

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } 3,427.

This cause was called for trial, and it appearing that there was not a sufficient number of jurors in attendance to try the same, it was, by consent of counsel, continued until to-morrow, at 10 o'clock a. m.

23 *Submission and verdict, from minutes November term,* 1863.

NEW ORLEANS, *Thursday, March 17th,* 1864.

Present: Hon. Edw. H. Durell, district judge.
Absent: Hon. John Catron, presiding judge.

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

This cause was this day called for trial before a jury, J. Magne, esq., appearing for plaintiff and Durant & Horner for defendants, when the following persons, after having taken the official oath and oath of allegiance to the United States, were sworn and empannelled to try the same, to wit: J. L. Sterry, J. L. Taylor, Mark Walsh, Leonard Craigan, Peter Mandell, J. H.

Kellar, Jacob F. Bentley, D. F. Simpson, Robert Fleming, James Murphy, Henry Perry; and it appearing that there were no other jurors in at-
24 tendance, Mr. John McFadden, as talisman, was sworn as above to complete the panel. J. L. Sterry was appointed foreman. And thereupon the pleadings were read, and after the introduction by plaintiffs of documents in evidence and charge from the court, the jury retired to deliberate upon their verdict, and shortly thereafter returned into court the following:

NEW ORLEANS, *March 17th*, 1864.

We, the undersigned, jurors duly sworn, agree to this judgment, that plaintiffs recover from defendants (except Edward Durrive, jr.) the note sued on, interest, and costs.

JNO. L. STERRY, *Foreman.*

Amount of the note, thirty-six hundred dollars.

JNO. L. STERRY, *Foreman.*

Ordered, That the same be recorded and that judgment be rendered in conformity thereto.

Plaintiff's bill of exceptions, filed on trial March 17th, 1864.

In the United States circuit court.

25 N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

Be it remembered, that on the 17th March, 1864, on the trial of this cause, the plaintiff having offered in evidence, 1st, the City Directory of New Orleans, to show that the firm of Edw'd Durrive & Co. was composed of Edward Durrive, Frederic Durrive, and Edward Durrive, jr.; 2d, the petition of Edward Durrive & Co. in the case of Edw'd Durrive & Co. *vs.* Berger & Brown, No. 73 of the United States provisional court for Louisiana, filed on the 19th February, 1863, in which the plaintiffs declared and averred that their firm of Edw'd Durrive & Co. was composed of Edward Durrive, Frederick Durrive, and Edward Durrive, jr.; 3d, a judgment rendered on the 23d November, 1863, by this hon. court in the suit of Culbertson, Kilgour & Co. *vs.* Edward Durrive & Co., No. 3,364 of the docket, to show that the defend-
26 ants being sued by plaintiff, the judgment was rendered, after due proceedings had, against said Edw'd Durrive & Co., and Edward Durrive, Frederick Durrive, and Edward Durrive, jr., individually and as the members of the commercial firm of Edw'd Durrive & Co.; and the defendants' counsel having objected to the introduction of each and of every of the foregoing documents, on the ground, 1st, that the Directory was the act of a third party, which could not affect E. Durrive & Co.; 2d, that the second (the petition filed by E. Durrive & Co. in the provisional court) that the filing of that petition was anterior to the date of the note sued on; 3d, that the judg't of this court was *res inter alios judicata*, and the presiding judge having sustained those objections, the plaintiff's counsel took the present bill of exceptions, of which the documents above mentioned are made a part, and tendered it to be signed.

(Signed) E. H. DURELL, *Judge.*

Defendant's bill of exceptions, filed on trial March 17, 1864.

27 N. L. LECANU
vs.
ELIZA LEFTWICH & Co. } No. 3,427.

U. S. circuit court for the eastern district *district* of Louisiana.

Be it remembered, that on the trial of this cause before the court and jury, on the 17th day of March, 1864, the counsel of pl'ff offered in evidence an instrument in writing on the back of the protest and purporting to be a certificate of the notary that he had notified the endorsers to the note, which is hereunto annexed for reference as a part of this bill, to which certificate the counsel of defendants objected, on the ground that the said certificate was not an authentic act by the laws of Louisiana and could not be received in proof of the facts contained in it. But the court overruled the objection and admitted the certificate. Whereupon the counsel of defendants excepted to the ruling of the court and tenders this as his bill of exceptions, pray-
28 ing the same may be signed and made part of the record.
(Signed) E. H. DURELL, *Judge.*

Judgment, from minutes of March 17, 1864.

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

By reason of the verdict of the jury herein and in conformity thereto, it is ordered, adjudged, and decreed that the plaintiff, Noel Leonor Lecanu, do have and recover judgment against the defendants *in solido*, to wit: Eliza Leftwich and Edward Durrive & Co., and against Edward Durrive and Frederick Durrive individually and as members of the commercial firm of Edw'd Durrive & Co., for the sum of thirty-six hundred dollars, with interest at the rate of eight per centum per annum from the 22d day of January, 1864, until paid; also seven dollars and twenty cents for costs of protest, certificate of notices, and stamps, and all the costs of suit. And as to Edward
29 Durrive, jr., that there be judgment of nonsuit in his favor against the said plaintiff, Noell Lenor Lecanu.

Order on motion to sign judgment, from minutes.

NEW ORLEANS, *March 29th*, 1864.

Present: Hon. Edw. H. Durell, district judge; absent, John Catron, presiding judge.

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.* } No. 3,427.

On motion of Durant & Hornor, of counsel for defendants, and on showing to the court that defendants desire to take a writ of error to the Supreme Court of the United States from the final judgment rendered herein on 17th inst., and the judgment is in favor of plaintiff, it is ordered that said judgment be now signed.

Final judgment, from judgment docket.

Circuit court of the United States, sixth circuit and eastern district of Louisiana, November term, 1863.

30

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.*
} No. 3,427.

By reason of the verdict of the jury herein and in conformity thereto, it is ordered, adjudged, and decreed that the plaintiff, Noel Leonor Lecanu, do have and recover judgment against the defendants *in solido*, to wit: Eliza Leftwich and Edward Durrive & Co., and against Edward Durrive and Frederic Durrive individually and as members of the commercial firm of Edw'd Durrive & Co., for the sum of thirty-six hundred dollars, with interest at the rate of eight per centum per annum from the 22d day of January, 1864 until paid; also seven dollars and twenty cents for costs of protest, certificate of notices, and stamps, and all the costs of suit. And as to Edward Durrive, jr., that there be judgment of nonsuit in his favor against the said plaintiff, Noel Leonor Lecanu.

Judgment rendered March 17, 1864; judgment signed March 29th 1864.

(Signed) E. H. DURELL, *Judge.*

31 *Order for a writ of error, from minutes of March 29th, 1864.*

N. L. LECANU
vs.
ELIZA LEFTWICH *et als.*
} No. 3,427.

On motion of Durante & Hornor, attorneys for defendants, it is ordered that a writ of error be granted to the said defendants, returnable to the Supreme Court of the United States at the next term thereof, on said defendants giving bond and security, which is now filed, in the sum of seventy-two hundred dollars, conditioned as the law directs, and that the said writ of error operate as a supersedeas and that defendants comply with all the conditions of the law.

Bond for writ of error, filed March 29th, 1864.

Know all men by these presents that we, Eliza Leftwich, Edward Durrive, and Frederick Durrive as principals, and A. Miltenberger, of New
32 Orleans as surety, are held and firmly bound unto Noel L. Lecanu in the full and just claim of seventy-two hundred dollars to be paid to the said Noel L. Lecanu, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and sixty four.

Whereas lately at a circuit court of the United States, sixth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Noel L. Lecanu is plaintiff and Eliza Leftwich, E. Durrive & Co. *et al.* are defendants, judgment was rendered against the said E. Leftwich, Edward and F. Durrive, defendants, and the said Leftwich and the said Durrive's having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to
33 reverse the judgment in the aforesaid suit, and a citation directed to the said Noel L. Lecanu, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that if the said Eliza Leftwich, Edward Durrive, and Fred'k Durrive shall prosecute their writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else, to remain in full force and virtue.

(Signed) ELIZA LEFTWICH,
By her att'ys, Durante & Hornor. [SEAL.]
FRED. DURRIVE. [SEAL.]
EDW. DURRIVE. [SEAL.]
A. MILTENBERGER. [SEAL.]

Sealed and delivered in presence of—

(Signed) CHARLES W. HORNOR.

Approved.

(Signed) E. H. DURRELL, *Judge.*

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the sixth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between Noel L. Lecanu, plaintiff, and Eliza Leftwich *et als.*, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 29th of March, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.] CHAS. CLAIBORNE,
Clerk of the United States circuit court for the sixth circuit, and eastern district of Louisiana.

Filed 29th March, 1864.

F. B. VINOT, *D'y Cl'k.*

35 THE UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

The President of the United States to Noel Leonor Lecanu, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein Eliza Leftwich *et als.* are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said Eliza Leftwich *et als.* as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 29th day of March, in the year of our Lord one thousand eight hundred and sixty-four.

E. H. DURELL, *Judge.*

36 *Marshal's return.*

Received March 31st, 1864, and on the same day I proceeded to the office of N. L. Lecanu, in Exchange alley, and there served a copy of this citation upon the said N. L. Lecanu in person.

D. CHRISTIE, *Dep'y U. S. Marshal.*

37 United States of America, circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 35 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had and documents filed, together with all the evidence adduced on the trial of the case of N. L. Lecanu *vs.* Eliza Leftwich *et als.*, No. 3,427 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 20th day of July, A. D. 1864.

[SEAL.] CHAS. CLAIBORNE, *Clerk.*

I, Edward H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 20th day of July, A. D. 1864.

[SEAL.] E. H. DURELL, *Judge.*

Filed October 13, 1864.

Supreme Court of the United States.

No. 169—December Term, 1865.

ELIZA LEFTEDICH AND OTHERS,

Plaintiffs in Error,

vs.

NOEL L. LECANU.

MR. GILLET'S BRIEF FOR PLAINTIFFS IN ERROR.

This was a suit by petition on a note of hand claimed to have been endorsed by all the plaintiffs in error. The plea was a general denial of everything in the petition.

On the trial before a jury the counsel for the plaintiff below offered in evidence an instrument in writing on the back of the protest, and purporting to be a certificate of the notary that he had notified the endorsers of the note, which is contained in the record. The counsel for the defendants objected to reading this instrument, on the ground that the certificate was not in conformity with the laws of Louisiana, and could not be received as proof of the facts stated in it. The court overruled the objection and admitted the certificate; and thereupon the counsel for the defendants below excepted.

The question arose under the following statute of Louisiana: (Statutes of 1855, p. 48, § 7.)

"Sec. 7. That notaries and parish recorders shall keep a separate book, in which they shall transcribe and record, by

order of date, all the protests by them made, with mention made of the notices which they shall have given of the same to the drawers and endorsers thereof, together with the names of the drawers or endorsers, the date of the notices, and the manner in which they were served or forwarded, which declaration, duly recorded under the signature of the notary public, or parish recorder and two witnesses, shall be considered and received in all courts in this State as a legal proof of the notices."

The certificate, although it stated in the body of it that it was signed by Janin and Lenes, as witnesses, had not their signatures to it, and therefore was not in conformity with the laws of that State; and consequently was not evidence against the endorsers to prove notice to them.

The admission of this certificate was erroneous, and for this error the judgment must be reversed and a new trial ordered.

R. H. GILLET,
Of Counsel for Plaintiffs in Error.

Dated January 27, 1866.